

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

MAY - 5 2010

DAVID J. MALAND, CLERK
BY
DEPUTY

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

ROGER ALLAN ETHEREDGE,
Plaintiff,

v.

SENIOR CARE HEALTH AND
REHABILITATION CENTER, ET AL.,
Defendant.

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CASE NO. 4:08CV412

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On March 2, 2010, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant Senior Care Health and Rehabilitation Center's Second Motion to Dismiss Plaintiff's Third Amended Complaint (Dkt. 37) be GRANTED, that Plaintiff's claims under 42 U.S.C. § 1983 and the ADA be dismissed with prejudice for failure to state a claim, that Plaintiff's "medical negligence" claims be dismissed without prejudice to re-filing in a court of proper jurisdiction, and that this cause of action be dismissed in its entirety.

The court, having made a *de novo* review of the objections raised by Plaintiff and Defendant's response, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of Plaintiff are without merit. Therefore, the court hereby adopts the

findings and conclusions of the Magistrate Judge as the findings and conclusions of this court. Defendant Senior Care Health and Rehabilitation Center's Second Motion to Dismiss Plaintiff's Third Amended Complaint (Dkt. 37) is GRANTED, Plaintiff's claims under 42 U.S.C. § 1983 and the ADA are dismissed with prejudice for failure to state a claim, Plaintiff's "medical negligence" claims are dismissed without prejudice to re-filing in a court of proper jurisdiction, and this cause of action shall be dismissed in its entirety.

IT IS SO ORDERED.

SIGNED this 5th day of May, 2010.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style with a large initial "R".

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE